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In re Application of :
ZANGARI *et al* :
U.S. Application No.: 10/552,205 :
PCT No.: PCT/US2004/010577 :
Int. Filing Date: 07 April 2004 :
Priority Date: 07 April 2003 :
Attorney Docket No.: 047177-9121-US01 :
For: MODULAR REFRIGERATION UNIT :

DECISION

This decision is in response to applicants' petition under 37 CFR 1.47(a) filed 23 November 2007.

BACKGROUND

On 22 June 2007, a decision granting applicants' petition under 37 CFR 1.181 was mailed. The application was forwarded to DO/EO/US to mail a Notification of Missing Requirements (Form PCT/DO/EO/905) requesting a declaration in compliance with 37 CFR 1.497(a) and (b) and the \$130.00 surcharge fee.

On 23 November 2007, applicants filed the instant petition which was accompanied by, *inter alia*, the petition fee; a declaration of Aaron Hernandez; and a declaration executed by four of the five named inventors.

DISCUSSION

Applicants claim that Raul Gutierrez refuses to cooperate and have filed the subject petition under 37 CFR 1.47(a).

A petition under 37 CFR 1.47(a) requires: (1) the petition fee; (2) factual proof that the missing joint inventor cannot be located or refuses to cooperate; (3) a statement of the last known address(es) of the nonsigning joint inventor(s); (4) and an oath or declaration executed by the signing joint inventor(s) on their behalf and on behalf of the nonsigning joint inventor(s).

Concerning item (1), the \$200.00 petition fee has been paid.

With regards to item (3), the address for Mr. Gutierrez has been provided.

Items (1) and (3) of 37 CFR 1.47(a) are satisfied.

Regarding item (2), section 409.03(d) of the MPEP discusses a refusal by an inventor to cooperate and states, in part:

A refusal by an inventor to sign an oath or declaration when the inventor has not been presented with the application papers does not itself suggest that the inventor is refusing to join the application unless it is clear that the inventor understands exactly what he or she is being asked to sign and refuses to accept the application papers. A copy of the application papers should be sent to the last known address of the nonsigning inventor, or, if the nonsigning inventor is represented by counsel, to the address of the nonsigning inventor's attorney . . .

Where a refusal of the inventor to sign the application papers is alleged, the circumstances of the presentation of the application papers and of the refusal must be specified in a statement of facts by the person who presented the inventor with the application papers and/or to whom the refusal was made . . .

When it is concluded by the 37 CFR 1.47 applicant that a nonsigning inventor's conduct constitutes a refusal, all facts upon which that conclusion is based should be stated in the statement of facts in support of the petition or directly in the petition. If there is documentary evidence to support facts alleged in the petition or in any statement of facts, such evidence should be submitted.

The 37 CFR 1.47(a) applicants submitted a declaration by Mr. Hernandez who claims that a complete copy of the subject application was presented to the nonsigning inventor on 06 October 2007. Mr. Hernandez states that Mr. Gutierrez refused to cooperate by signing the declaration in a telephone call the next day.

For the oral refusal to be accepted, the 37 CFR 1.47(a) applicants must show that a complete copy of the subject application was presented to the nonsigning inventor. Here, petitioners did not provide any documentary evidence to support Mr. Hernandez's claim that the nonsigning inventor received a complete copy of the application on 06 October 2005. Petitioners should provide a copy of the cover letter and postal receipts showing that Mr. Gutierrez received a complete copy of the subject application (description, claims and drawings) with any renewed petition.

Concerning item (4), the 37 CFR 1.47(a) applicants submitted a declaration signed by four of the five joint inventors on behalf of both nonsigning joint inventor. However, this declaration does not comply with 37 CFR 1.497(a) and (b).

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Specifically, petitioners submitted one first page and two second pages of the declaration. While each inventor need not execute the same oath or declaration, each oath or declaration executed by an inventor must contain a complete listing of all inventors so as to clearly indicate what each inventor believes to be the appropriate inventive entity. Applicants must submit the complete declaration signed by each co-inventor.

For the reasons noted above, item (2) and (4) of 37 CFR 1.47(a) are not yet satisfied.

CONCLUSION

Applicants' petition under 37 CFR 1.47(a) is **DISMISSED** without prejudice.

If reconsideration on the merits of this petition is desired, a proper response must be filed within **TWO (2) MONTHS** from the mail date of this decision. No additional petition fee is required.

It is noted that applicant's \$400.00 petition fee submitted on 11 May 2007 has been credited back to Deposit Account No. 13-3080. The \$130.00 surcharge fee has been charged to Deposit Account No. 13-3080 as authorized.

Any further correspondence with respect to this matter deposited with the United States Postal Service should be addressed to the Mail Stop PCT, Commissioner for Patents, Office of PCT Legal Administration, P.O. Box 1450, Alexandria, Virginia 22313-1450, with the contents of the letter marked to the attention of the Office of PCT Legal Administration.



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